

Tentative Rulings for August 11, 2000
Department 72

There are no tentative rulings for the following cases. The parties should appear at the hearing.

637892-1 Hansen Bros. v. Recycling Unlimited

646628-8 City of Fresno v. Valdez

(Tentative Rulings begin at next page)

Tentative Ruling

Re: ***Vilaysone v. Nelson et al.***
Superior Court Case No. 641534-3

Date of Hearing: August 11, 2000 (Dept. 72)

Motion: Summary Adjudication

Tentative Ruling:

To deny Nelson and Hunt's motion for summary adjudication. See Notice, 1:24-26.

CCP §437c(f)(1) provides: "A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or that there is no merit to a claim for damages, **as specified in Section 3294 of the Civil Code**, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs.

Nelson and Hunt have failed to identify a proper subject for summary adjudication. The plaintiff never alleges causes of action for wrongful death of a fetus or negligent infliction of emotional distress. The request for summary adjudication does not challenge any cause of action actually alleged in this case. The complaint makes no mention of emotional distress. The only mention of a miscarriage/death of a fetus is at page 3 in the damages section. See Complaint. The miscarriage is listed as other damages. The miscarriage of the baby is alleged as a component of damages. The moving party may not seek summary adjudication of part of the damages claim unless it is for punitive damages. See CCP §437c(f)(1).

Nelson and Hunt have failed to meet their burden on this motion for summary adjudication. Nelson and Hunt failed to identify a proper subject for summary adjudication. The burden never shifts to the plaintiff

Pursuant to CRC 391(a) and CCP §1019(a), no further written order is necessary. The minute order adopting the tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Re: ***Maria Del Carmen Silva, et al. v. David Nick Washington, Jr. et al.***

Superior Court Case No. 647402-7

Hearing Date: August 11, 2000 (Dept. 72)

Motion: Compel Attendance of Plaintiffs at Depositions and Award of Sanctions

Tentative Ruling:

To grant the motion to compel depositions and to impose sanctions upon plaintiffs in the amount of \$600.00. This tentative ruling is based on plaintiffs' alleged failure to attend two prior scheduled depositions, plaintiffs' alleged failure to maintain contact with their attorney, and the lack of opposition to this motion. (See sections 2023(a)(4) and 2025(j) of the Code of Civil Procedure.)

Plaintiff Maria Del Carmen Silva shall attend her deposition on August 24, 2000 at 10:00 a.m. at the law offices of McCormick, Barstow, Sheppard, Wayte & Carruth, 5 River Park Place East, Fresno, CA 93720.

Plaintiff Ignacio Ramos Ramirez shall attend his deposition on August 24, 2000 at 2:00 p.m. at the law offices of McCormick, Barstow, Sheppard, Wayte & Carruth, 5 River Park Place East, Fresno, CA 93720.

Plaintiff Guadalupe Alcazar shall attend her deposition on August 25, 2000 at 10:00 a.m. at the law offices of McCormick, Barstow, Sheppard, Wayte & Carruth, 5 River Park Place East, Fresno, CA 93720.

Plaintiff Pablo Chavez shall attend his deposition on August 25, 2000 at 2:00 p.m. at the law offices of McCormick, Barstow, Sheppard, Wayte & Carruth, 5 River Park Place East, Fresno, CA 93720.

Sanctions in the sum of \$600.00 shall be paid to defendants David Nick Washington, Jr. and Harris Farms, Inc., by cash or money order payable to "McCormick, Barstow, Sheppard, Wayte & Carruth LLP" and directed to defendants' counsel within 30 days of this order.

Pursuant to CRC 391(a) and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Re: **Andrews v. Winsor**
Superior Court Case No. 643682-8

Hearing Date: August 11, 2000 (Dept. 72)

Motion: By plaintiff to compel further responses to special interrogatories (set one) and for monetary sanctions

Tentative Ruling:

To grant, with defendant to provide either further factual information, without objection, to all the interrogatories at issue, or to provide a response in conformity with Code of Civil Procedure §2030(f)(2), where appropriate, 10 days after service of the order. To deny plaintiff's request for monetary sanctions against defendant for failure to reasonably and in good faith attempt to resolve the disputed issues before bringing the motion to compel. (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424 [79 Cal.Rptr.2d 62].)

After the granting of a motion to compel, the making of further objections is not appropriate. (Code of Civ. Proc. §2030(l).)

A letter or telephone may be sufficient to show a reasonable and good faith attempt to resolve the issues informally with opposing counsel. However, writing a letter, mailing it to the wrong address with no time for meaningful discussion before serving a motion, before the 50 days in which to do so expired, cannot be considered to be in good faith. (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 432-433 [79 Cal.Rptr.2d 62, 67].)

Pursuant to CRC 391(a) and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.